

Appl. No. 09/923,931  
Amendment dated August 29, 2005  
Reply to Office Action of June 29, 2005

### **REMARKS**

Applicants have received and reviewed an Office Action dated June 29, 2005. By way of response, Applicants have amended claims 1, 75, and 85. Claims 1, 5-11, 13-15, 17-38, and 75-78, 85-100 are pending. No new matter is presented.

For the reasons given below, Applicants submit that the pending claims are in condition for allowance and notification to that effect is earnestly solicited.

#### **Support in the Specification as Filed for Amended Claims**

Applicants have amended claims 1 and 75. These claims recite a cleaning composition "free of an activator for active oxygen compound." Support for this amendment is found in the specification at least at page 33, lines 1-28, which recites activators may be present "in some embodiments." Examples 1-3 demonstrate that activators are not necessary to achieve the results of this invention (see page 43-48).

Claim 85 depends from claim 1. This claim recites a cleaning composition "free of additives." Support for claim 85 as amended is found in the specification at least at pages 43-48. The Examples demonstrate that additives are not a necessary aspect of the invention.

The Applicants argue the amended claims are in condition for allowance. Notification to that effect is earnestly solicited.

#### **Rejection of Claims under 35 U.S.C. § 112**

The Examiner rejected claims 1, 5-11, 13-15, 17-23, 26-38, 75-78 and 85 under 35 U.S.C. § 112, first paragraph. This is a written description rejection. Applicants respectfully traverse this rejection, and request reconsideration in view of the following comments.

The Office Action asserts the specification as originally filed does not fully support the recitation in the claim of "wherein the cleaning composition is substantially free of an activator for active oxygen compound." The Office Action asserts the absence of a component from the examples or preferred embodiments does not provide basis for the exclusion.

Applicants respectfully submit that, according to a standard stated in the MPEP, the specification as filed provides adequate support for independent claims 1 and 75. According to §

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2173.05(i) of the MPEP, alternative elements positively recited in the specification may be explicitly excluded in the claims. See *In re Johnson*, 558 F.2d 1008, 1019, 194 U.S.P.Q. 187, 196 (CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining.") A lack of literal basis in the specification for a negative limitation is not a sufficient basis to establish a *prima facie* case for lack of descriptive support. See *Ex parte Parks*, 30 U.S.P.Q. 2d 1234, 1236 (Bd. Pat. App. & Inter. 1993).

Claims 1 and 75 recite a composition "free of an activator." This recitation, as stated above, finds support in the specification at least at page 33, lines 1-28. The specification recites an activator may be present "in some embodiments," which specifically allows for other embodiments that do not employ an activator. This recitation provides support for a composition "free of an activator", according to the standard in the MPEP at § 2173.05(i) and *In re Johnson*.

Accordingly, it is believed that the amended claims fully comply with § 112, first paragraph, and withdrawal of this rejection is respectfully requested.

The Examiner rejected claims 1, 5-11, 13-15, 17-23, 26-38, 75-78, and 85 under 35 U.S.C. § 112, second paragraph. The Examiner objected to the term "substantially" in claims 1, 75, and 85. Applicants respectfully traverse this rejection, and request reconsideration in view of the following comments.

Solely to expedite prosecution, Applicants have amended claims 1 and 75 to recite "wherein the cleaning composition is free of an activator for active oxygen compound." Applicants have also amended claim 85 to recite "wherein the composition is free of additives." As the language objected to is no longer recited in the claims, this rejection is moot.

Accordingly, it is believed that the amended claims fully comply with § 112, second paragraph, and withdrawal of this rejection is respectfully requested.

As an additional matter, the Examiner rejected claim 23 under both 35 U.S.C. § 112, first and second paragraphs. The Office Action objected to the recitation of "substantially free" of an activator. Applicants respectfully note that claim 23 does not recite "substantially free". Thus, Applicants believe the Office Action inadvertently included claim 23 under these rejections.

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Applicants request the Examiner withdraw the rejections under 35 U.S.C. § 112, first and second paragraphs, as against claim 23.

**Rejections of Claims Employing Reference DE 402608**

The Examiner rejected claims 1-11, 13-16, 18-22, 26-33, 36-39, 42, and 75-78 under 35 U.S.C. § 102(b) as being anticipated by DE 4026806 (hereinafter "the '806 reference").

Applicants respectfully traverse this rejection, and respectfully request reconsideration in view of the following comments.

The Office Action asserts the '806 reference discloses the claimed invention with sufficient specificity to constitute anticipation. Further, the Office Action asserts that "substantially free" would allow for amounts of TAED as taught by the '806 reference.

The invention of present claims 1 and 75 relates to a cleaning composition that is free of an activator for the active oxygen compound. The present claim language reflects this aspect of the presently claimed invention. The presently claimed invention unexpectedly and advantageously provides a cleaning composition with superior cleaning and sanitizing capabilities that is free of activator for the active oxygen composition (see, e.g., Examples 1-3 on pages 44-48).

The '806 reference only discloses a cleaning composition that contains an oxygen activator as an essential component (see, e.g. page 2, /1, and page 10). The '806 reference does not disclose that a cleaning composition without an activator would successfully clean carpets and upholstery. In fact, the ingredients employed in the '806 reference consist of solid inorganic peroxide, an activator for this peroxide, and a tenside. An activator is a required component of the alkaline cleaning solution.

Solely to advance prosecution of the present application, Applicants have amended independent claims 1 and 75 to recite a composition "free of an activator." As such, the amended claims do not include the activator required in the '806 reference. Thus, this reference neither teaches nor suggests the presently claimed invention.

Because all of the other rejected claims ultimately depend from claim 1 or 75, this rejection is moot for the dependent claims.

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Accordingly, based on the foregoing differences, Applicants respectfully submit that the reference cited in this rejection fails to disclose the presently claimed invention. Withdrawal of this rejection is respectfully requested.

The Examiner rejected claims 34 and 35 under 35 U.S.C. § 103(a) as being obvious over DE 4026806. Applicants respectfully traverse this rejection, and respectfully request reconsideration in view of the following comments.

Claims 34 and 35 depend from claim 1. As discussed above, claim 1 is not anticipated by the '806 reference. Thus, claims 34 and 35 are allowable. The Examiner has not made a *prima facie* case of obviousness of claims 34 and 35 because the present claim 1 is not obvious in view of the '806 reference.

Accordingly, based on the foregoing, Applicants respectfully submit that the reference cited in this rejection fail to teach or suggest claims 34 and 35. Withdrawal of this rejection is respectfully requested.

**Rejections of Claims Employing Reference 2003/0162685**

The Examiner rejected claims 1, 5, 7, 11, 13, 14, 17, 18, 26-38, 75-78, and 85 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0162685 (hereinafter "the '685 application"). Applicants respectfully traverse this rejection, and respectfully request reconsideration in view of the following comments.

The Office Action asserts that a step such as brushing or rubbing the cleaning composition on the carpet as recited by instant claim 1 would inherently be taught by the '685 application and be supported in the parent application '403. The Office Action asserts the '685 application discloses the claimed invention with sufficient specificity to constitute anticipation.

The '403 application does not explicitly disclose a process of brushing or rubbing a carpet. Without disclosure such as this, it does not inherently disclose all of the requirements of independent claims 1, 75, and their dependents. Thus, Applicants assert the '685 application does not sufficiently disclose the presently claimed invention to constitute anticipation.

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Accordingly, based on the foregoing differences, Applicants respectfully submit that the reference cited in this rejection fails to disclose the presently claimed invention. Withdrawal of this rejection is respectfully requested.

**Obviousness-Type Double Patenting Rejections**

The Examiner provisionally rejected claims 1, 5-11, 13-15, 17-38, 75-78, and 85-100 under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 28-50 of co-pending Application No. 10/214625 and claims 1-21 and 23-25 of 10/299536. Applicants respectfully traverse this rejection, and respectfully request reconsideration in view of the following comments.

When the claims are otherwise in condition for allowance, Applicants can submit a Terminal Disclaimer to obviate these rejections, if necessary.

Accordingly, Applicants request withdrawal of these rejections.

**Conclusion**

In summary, Applicant submits that each of claims 1, 5-11, 13-15, 17-38, 75-78 and 85-100 is in condition for allowance, and notification to that effect is earnestly solicited. The Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this patent.

Respectfully submitted,

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Date: Aug 29, 2005

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